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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/749,177

12/30/2003

David S. Taylor

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05/12/2009

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EXAMINER

PATEL, NIHIR B

ART UNIT

PAPER NUMBER

3772

NOTIFICATION DATE

DELIVERY MODE

05/12/2009

ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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Office Action Summary	Application No. 10/749,177	Applicant(s) TAYLOR ET AL.	
	Examiner NIHIR PATEL	Art Unit 3772	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 10 February 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,4-6 and 8-30 is/are pending in the application.
- 4a) Of the above claim(s) 2-5 and 15-17 is/are withdrawn from consideration.
- 5) ☒ Claim(s) 10-14 and 18-26 is/are allowed.
- 6) ☒ Claim(s) 1,6,8,9 and 27-30 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 30 December 2003 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Arguments

1. In reference to the drawings objections, the applicant disagrees and contend that at least figure 2 shows an example of the “second respiratory component” having at least two spaced apart clip openings” and of the first respiratory component having the mounting slots. The examiner agrees with the applicant's argument. The further argues that the figure 9 shows "the clip openings of the first respiratory component" "comprises four generally parallel slots" "and wherein the intermediate portion" "of the mounting clip is received in each of these slots." The examiner disagrees. According to response to election/restriction dated February 27th, 2008 the applicant elected figures 25 and 26. None of these figures show "the clip openings of the first respiratory component comprising four generally parallel slots wherein the intermediate portion of the mounting clip is received in each of those slots." In the response to election/restriction dated February 27th, 2008 the applicant states “at least claims 1, 10 and 27-30 are generic of the species 1-9. The applicant does not state claims 4, 5, 11 and 12 which recite "the clip openings of the first respiratory component comprising four generally parallel slots wherein the intermediate portion of the mounting clip is received in each of those slots" as also being generic. In the office action below, the examiner will withdraw claims 4, 5, 11 and 12 as being drawn to a non-elected species.

2. The applicant further argues that Ging does not disclose second respiratory component. The examiner disagrees with the applicant's argument. Figure 5c shows that the respiratory component 34 on both sides indicating first and second respiratory component. The applicant further argues that Ging does not disclose a mounting clip for releasably securing the first and

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second respiratory component together. The examiner disagrees with the applicant's argument. Figures 9a, 9b and 10a shows a mounting clip for releasably securing the first and second respiratory component together. The applicant further argues that Ging does not disclose an intermediate portion of the mounting clip that is received within both of the clip openings of the first respiratory component and the free end of the mounting clip are received in the clip openings of the second respiratory component. The examiner disagrees with the applicant's argument. Ging does disclose an intermediate portion of the mounting clip that is received within both of the clip openings of the first respiratory component and the free end of the mounting clip are received in the clip openings of the second respiratory component (see figure 5c). The applicant further argues that Ging does not disclose a belt as recited in claim 6. The examiner disagrees with the applicant's argument. In a broad definition the straps shown in figure 1 is defined as belt. The applicant further argues that Ging does not show biased detent tabs. The examiner disagrees with the applicant's argument. Figures 9a and 9b of the Ging reference shows biased detent tabs.

In reference to claims 10-14 and 18-26, the prior art does not disclose a user-wearable respiratory component support member configured to be disposed around a user's waist.

In reference to claims 27-30, the method steps would have been obvious because they would have resulted from the use of the device of Ging.

Election/Restrictions

3. Claims **4 and 5** are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected species (figures 1-9), there being no allowable generic or linking

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claim. Election was made **without** traverse in the reply filed on February 27th, 2008.

Response to Amendment

4. The examiner acknowledges the amendment filed on February 10th, 2009. The amendment comprises amending claims 10, 27 and 29; and cancelling claim 7.

Drawings

5. The drawings are objected to under 37 CFR 1.83(a). The drawings (figures 25 and 26) pertaining to the elected species must show every feature of the invention specified in the claims. Therefore, **“the clip openings of the first respiratory component comprise four generally parallel slots, and wherein the intermediate portion of the mounting clip is received in each of those slots”** must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as “amended.” If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an

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application must be labeled in the top margin as either “Replacement Sheet” or “New Sheet” pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 102

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

7. Claims **1, 6, 8 and 9** are rejected under 35 U.S.C. 102(e) as being anticipated by Ging et al. (US 6,907,882).

8. **As to claim 1**, Ging teaches an apparatus that comprises a first respiratory component **34** having at least two spaced apart clip openings **38 (see figure 5c; col. 10 lines 34-52)**; a second respiratory component **34** having at least two spaced apart clip openings **38 (see figure 5c; col. 10 lines 34-52)**; and a mounting clip **82** having an intermediate portion **(the area located between the free ends 116)** and two spaced apart free ends **116** connected to the intermediate portion **(see figures 9a and 9b)**, wherein the intermediate portion of the mounting clip is received within both of the clip openings of the first respiratory component **(see figure 10a)** and the free ends of the mounting clip are received in the clip openings of the second respiratory

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component for releasably securing the first and second respiratory components together (**see figure 10a**).

9. **As to claim 6**, Ging teaches an apparatus wherein the first and second respiratory component comprises a belt (**see figures 5a and 5c**).

10. **As to claim 8**, Ging teaches an apparatus wherein each free end of the mounting clip has a biased detent tab thereon for locking engagement with an opposed detent surface adjacent its respective clip opening on the second respiratory component (**see figures 5a and 5c**).

11. **As to claim 9**, Ging teaches an apparatus wherein the mounting clip is formed from polypropylene (**see col. 15 lines 24-30**).

Claim Rejections - 35 USC § 103

12. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

13. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

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14. Claims **27-30** are rejected under 35 U.S.C. 103(a) as being unpatentable over Ging et al. (US 6,907,882).

15. As to claims **27 and 28**, Ging substantially discloses method steps comprises providing at least two spaced apart connector receptacles **38** on the respiratory component (**see figure 5c; col. 10 lines 34-52**); providing at least two generally parallel slots in the support member; providing a mounting clip **82** having an intermediate portion (**the section between 116 is defined as the intermediate section**) and two spaced apart free ends **116** projecting therefrom; inserting the intermediate portion of the mounting clip into the slots on the support member, with the free ends of the mounting clip projecting from one side of the support member; and inserting the free ends of the mounting clip into the connector receptacles on the respiratory component (**see figures 5a, 5c, 9a, 9b and 10a**).

The method steps would have been obvious because they would have resulted from the use of the device of Ging.

16. As to claim **29 and 30**, Ging substantially discloses method steps comprises providing at least two spaced apart connector receptacles **38** on the respiratory component (**see figure 5c; col. 10 lines 34-52**); providing at least two slots in the support member, providing a mounting clip **82** having an intermediate portion (**the section between free ends 116 is defined as the intermediate section**) and two spaced apart free ends **116** projecting therefrom; inserting the intermediate portion of the mounting clip into the clip openings on the respiratory component, with the free ends of the mounting clip projecting from one side of the respiratory component; and inserting the free end of the mounting clip into the slots of the support member (**see figures 5a, 5c, 9a, 9b and 10a**)

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The method steps would have been obvious because they would have resulted from the use of the device of Ging.

Allowable Subject Matter

17. Claims **10-14 and 18-26** are allowed. The prior art does not disclose a user-wearable respiratory component support member configured to be disposed around a user's waist.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to NIHIR PATEL whose telephone number is (571)272-4803. The examiner can normally be reached on 7:30 to 4:30 every other Fridays off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Patricia Bianco can be reached on (571) 272-4940. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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/Nihir Patel/

Examiner, Art Unit 3772

/Patricia Bianco/

Supervisory Patent Examiner, Art Unit 3772